IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.545 OF 1995.

Shri Jatyendra Singh Dhandra
& ors. : Appellants.

versus

Annappa Mahadeo Yesare & Anr. : Respondents.

Mr.J.K.Murthy i/by S.R.Kudroli for the appellants.

Mr.G.S.Hegde for Respondent No.2.

CORAM : D.G.DESHPANDE,J.

DATED : 2nd February 2005.

ORAL ORDER

1. This appeal is filed by the original claimants/applicants who had filed a Claim Petition No.189 of 1987 before the Motor Accidents claims Tribunal Pune claiming Rs.Four lacs as compensation for the death of Kawaljit

Suingh Dhandra who was the son of Appellant Nos. 1 and 2, and, brother of appellant No.3. The accident took place on 11.11.1986 at about 10.15. p.m. when the deceased Kawaljit and his companion Brijmohan Singh were going by motor cycle by Gurudwara Road. The motor cycle was being driven by Brijmohan singh. It met with an accident at the cross section of Gurudwara road and Dr.Coyaji road near Lashkar Police Station, Pune. Both of them suffered serious injuries and ultimately succumbed to their respective injuries.

2. The trial Court gave the findings that the driver of the S.T. bus was rash and negligent in driving the vehicle; that Kawaljit died on account of accident and as a result of such driving. The Court found that it was a case of contributory negligence, but the negligence of the deceased or Brijmohan, the driver of the motor cycle, was to the extent of 25% only. The court awarded Rs.28,050/- as compensation exclusive of no fault liability together with interest and, therefore, being aggrieved by the said order, the claimants have filed this appeal.

3. There is no counter appeal or cross objection. Therefore, the findings of the Court that they are negligent to the extent of 25% has to be treated as the basis for this claim for further enhancement.

4. The counsel for the appellants contended that looking to this limited issue that, as per the evidence, deceased Kawaljit was drawing gross salary of Rs.2226.70 and his take home salary, after deductions, was Rs.1846/- per month. At the time of accident, he was 24 years of age and was having good service. He could have married soon. The Court also considered that Applicant No.1 was a retired Army Officer and was getting pension of Rs.1787/- per month; that the applicants have received amount of Rs.90,000/- towards the Army Group Insurance Scheme of which the deceased was the member and, therefore, monthly dependency was taken at Rs.150/- per month and, yearly dependency fixed at Rs.1800/-. Considering the age of the father and mother of the deceased i.e. 52 and 45 respectively, the Court adopted multiplier of 18.

5. Counsel for the appellants contended that fixing the dependency at Rs.150/- per month was totally out of context and disproportionate. Even if it is considered that Applicant No.1 was getting pension of Rs.1787/- per month, as a young son, deceased Kawaljit must be contributed at least 1/2 of his income to the family. Therefore, according to him, reasonable amount should be taken.

6. On the other hand, the counsel for the respondent No.2 contended that when the dependents received Rs.90,000/- from the Army Group Insurance Scheme and, when the father - Applicant No.1 was getting such sumptuous pension then the trial Court gave correct findings regarding take home salary at Rs.1846/- per month.

7. I am not convinced by this submission made by the counsel for the Respondent No.2. There is no basis to hold that the deceased was contributing Rs.150/- per month to the family.

Generally out of the income of deceased in such cases 1/3rd is to be received for him and 2/3rd is to be for family. But looking to the pension amount, received by Applicant No.1, Rs.850/- would be proper as the contribution by the deceased to the family.

8. Counsel for the respondent No.2 contended that after marriage the amount would further reduce. He also argued that the multiplier of 18 applied by the trial Court was wrong.

9. When the parents of a deceased son claim compensation, their age matters i.e. their age is a deciding factor. Therefore, looking to the age of the appellant Nos. 1 and 2 at the time of accident, multiplier of 10 would be proper. The trial Court has granted Rs.5000/- for the loss of consortium. This amount is not proper and adequate. Rs.20,000/- should have been awarded on that count to the claimants. Therefore, considering the dependency of Rs.850/- per month x 12 months x 10 multiplier = Rs.1,02,000/- as the amount of compensation, Plus Rs.20,000/- towards consortium. Therefore, total amount of compensation is Rs.1,22,000/-. In these

circumstances, the appeal is required to be allowed partly. Hence the order :-

:ORDER:

The appeal is allowed with costs.

The claimants/appellants are entitled to Rs.1,22,000/- with 9% interest from the date of application till payment.

[D.G.DESHPANDE]

02/02/2005 JUDGE.